

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8985 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GK VAGHELA

Versus

UNION OF INDIA

Appearance:

MR Girish Patel Sr.Advocate for Mr.PH PATHAK for Petitioner
MR RJ OZA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 07/05/99

ORAL JUDGEMENT

Rule. Mr.Rasesh Oza appears and waives service of notice of rule on behalf of the respondents. In the facts and circumstances of the case the matter is taken up for final hearing.

2. This petition is filed against the dismissal of
OA 604 of 1998 by the Central Administrative Tribunal

("CAT" for short) on September 24, 1998. Being aggrieved by an order imposing penalty, passed by the Disciplinary Authority, the petitioner approached CAT by filing the above petition. It was the case of the petitioner before CAT that the order was violative of principles of natural justice and fair play. It was also contended that in the facts and circumstances of the case, no such order could have been passed by the Authority and the order was, therefore, illegal and ultra vires and was liable to be quashed and set aside. On merits also, submissions were made on behalf of the petitioner. The CAT, after considering the rival contentions of the parties, observed that under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1985 (hereinafter referred as "the Rules"), an appeal was competent against an order of penalty imposed on a delinquent. Since an appeal was provided, the provisions of Section 20 of the Administrative Tribunal Act, 1985 would come into play. Sub-section (1) of Section 20 reads as under:-

"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed for all the remedies available to him under the relevant service rules as to redressal of grievances."

3. The CAT was of the opinion that no exceptional circumstances were brought to the notice of CAT to exercise power by entertaining O.A. Accordingly, the application was dismissed. In the operative part of the order in para 9, the CAT observed:-

" In the light of the foregoing discussion, we hold that the applicant has not brought out any extraordinary cir would warrant dispensing with the need for exhausting the remedies available to him under the relevant service Rules and therefore, the OA is premature.

The applicant is required to file an appeal to the concerned Appellate Authority where he can raise all the relevant contentions. If the applicant were to do so within a fortnight, the Appellate Authority shall dispose of the same on merits by means of a speaking order within six weeks thereafter. The applicant is at liberty to approach this Tribunal if he is aggrieved by the orders of the Appellate Authority.

With the above directions, the O.A. is

finally disposed of with no orders as to costs."

4. Mr. Girish Patel, Senior Advocate, appearing for Mr. Pathak reiterated the contentions raised before CAT. He submitted that when the issue of chargesheet was without jurisdiction and the order passed by the authority was violative of the principles of natural justice, CAT ought to have entertained application without insisting the petitioner to approach appellate authority. He further submitted that in any case, CAT has committed an error in making certain observations on the merits of the matter. When CAT did not entertain the application, it ought not to have expressed opinion on merits of the case.

5. Mr. Oza, Learned Counsel for the respondent supported the order passed by the Authorities. According to him, the order passed by CAT cannot be said to be contrary to law. There is no error of jurisdiction or error of law and the petition deserves to be dismissed.

6. Now so far the order passed by CAT not entertaining the petition is concerned, in our opinion, no error of law and/or of jurisdiction can be said to be committed by the CAT. To us sub-section(1) of Section 20 is clear and specific. It states that CAT shall not ordinarily admit an application where a statutory remedy is available under the relevant service rules. Looking to the Rules referred to hereinabove, any order passed by an authority under Rule 11 is subject to appeal under Rule 23 of the Rules. The Rules are statutory in nature. Ordinarily, when a statutory remedy is available to the aggrieved party to approach the Appellate Authority, CAT would refuse to entertain an application, and by doing so, CAT has not committed any error of law or of jurisdiction. In fact, CAT has taken into account the legislative intent reflected in Section 20(1). It is true that the bar is not absolute and in certain circumstances, CAT may entertain an application. Mr. Patel is right in submitting that the provision is merely enabling one but taking into consideration, the phrasology used by Parliament, if the CAT has directed the petitioner to go before an Appellate Forum, no exception can be made against such a direction.

7. Recently, in Tin Plate Co. of India Ltd. Vs. State of Bihar & Others; AIR 1999 SC 74, the Apex Court has observed:-

"It is no doubt that when an alternative and efficacious remedy is open to a person, he should

be required to pursue that remedy and not to invoke extra-ordinary jurisdiction under Article 226 & 227 of the Constitution of India."

8. Here the jurisdiction is further truncated by Parliament by the language in sub-section (1) of Section 20 of the Act that ordinarily the CAT would not entertain an application. The Tribunal has observed that there are no special circumstances which warranted filing of Original Application dispensing with statutory remedy available to the applicant. We do not find any error in the finding by the CAT.

9. On second point, however, in our opinion, there is substance and the grievance of the learned Counsel is not ill-founded altogether. When the CAT has not entertained application and directed the applicant to approach appellate authority, it ought not to have made observations on merits.

10. At more than one place, the CAT stated that it would not enter into correctness or otherwise of the allegations levelled against the petitioner as all these questions can be decided by the appellate authority. But when the attention of CAT was invited by the Learned Counsel for the petitioner to the allegations and it was argued that the conduct of the petitioner could not amount to misconduct or misbehaviour, the CAT stated:

"The charge against the applicant is that he shouted and misbehaved with superior officers in the office premises. This cannot be said to be in exercise of legitimate trade union activities. It is not as if the applicant was part of a negotiating team with the Management and had raised his voice during discussions. Even in such situations, both parties are expected to maintain proper decorum. The reference to the designation of the applicant as Divisional Secretary of the Union was essentially with a view to identify the person. The letter dated 16.19.1995 as at Annexure-A does not bar drawal of proceedings in the present case. It is a different matter as to whether charges can be held to be established. This contention is without any merit."

11. In our opinion, the CAT ought not to have stated anything on merits when the petitioner was left to approach statutory authority under the relevant rules by filing appeal against the order passed by the disciplinary authority. In this connection, we may

reproduce what the Apex Court said in Tin Place Company of India Ltd. already referred in the earlier part of the judgement. Their Lordships stated:

" Learned counsel appearing for the appellant urged that the High Court has committed grave error in making various observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy and thereby prejudicing the case of the appellant to be taken up before the Appellate Authority who was bound to decide the case in terms of the observations made by the High Court. The argument is well substantiated. It is no doubt true that when an alternative and equally efficacious remedy is open to a person, he should be required to pursue that remedy and not to invoke extraordinary jurisdiction of the High Court under Article 226 of the Constitution. In the present case, admittedly, the appellant had an alternative and euqally efficacious remedy by filing an appeal before the Appellate Authority against the order of assessment and in view of such a remedy being available to the appellant, the High Court was right in dismissing the writ petition on the ground that the appellant has an alternative remedy available under the Bihar Sales Tax Act. However, we do not subscribe to the view of the High Court when it made a number of observations touching upon the merits of the case while dismissing the writ petition on the ground of alternative remedy. If the writ petition under Article 226 is to be dismissed on the ground of alternative remedy, the High Court is not required to express any opinion on merits of the case which is to be pursued before an alternative forum. It is true that in the present case the appellant's counsel in his effort to get over the objection of existence of an alternative remedy, addressed the Court on merits of the case and thereby invited the observations on merits of the case by the High Court. But in such a situation if the High Court is to dismiss the writ petition on the ground of alternative remedy, it would be a sound exercise of jurisdiction to refrain itself from expressing any opinion on the merits of the ase which ultimately is to be taken up by a person before an alternative forum." (Emphasis supplied).

12. In view of the above legal position, the observations made by the CAT on merits of the matter cannot be approved. In our view, such observations ought not to have been made by the CAT. It is, therefore, made clear that as and when the proceedings in accordance with the statutory rules will be taken before appropriate authorities, they will be decided strictly on their own merits without being influenced by observations made by the CAT.

13. In the result, the petition is partly allowed. So far as the order passed by the CAT not entertaining the petition is concerned, it is confirmed and is not disturbed. But observations made on the merits of the matter are not approved and the authorities are directed to decide the matter without being influenced in any manner whatsoever by those observations. No order as to costs.

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